

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chris Olmsted	Team: Squad #9	CCRB Case #: 202001765	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/08/2019 12:30 PM	Location of Incident: 726 Grand Street	Precinct: 90	18 Mo. SOL 4/8/2021	EO SOL 11/23/2021	
Date/Time CV Reported Mon, 03/02/2020 2:57 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 03/02/2020 2:57 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michal Jalbrzykowski	21736	959710	090 PCT
2. POM Volkan Maden	14352	956863	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michal Jalbrzykowski	Abuse: Police Officer Michal Jalbrzykowski stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Volkan Maden	Abuse: Police Officer Volkan Maden stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Michal Jalbrzykowski	Abuse: Police Officer Michal Jalbrzykowski frisked § 87(2)(b)	
D.POM Michal Jalbrzykowski	Abuse: Police Officer Michal Jalbrzykowski searched § 87(2)(b)	
E.POM Volkan Maden	Abuse: Police Officer Volkan Maden frisked § 87(2)(b)	
F.POM Volkan Maden	Abuse: Police Officer Volkan Maden searched § 87(2)(b)	
G.POM Michal Jalbrzykowski	Abuse: Police Officer Michal Jalbrzykowski searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
H.POM Volkan Maden	Abuse: Police Officer Volkan Maden searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
I.POM Michal Jalbrzykowski	Abuse: Police Officer Michal Jalbrzykowski failed to provide § 87(2)(b) with a business card.	
J.POM Volkan Maden	Abuse: Police Officer Volkan Maden failed to provide § 87(2)(b) with a business card.	
K.POM Volkan Maden	Abuse: Police Officer Volkan Maden failed to provide § 87(2)(b) with a business card.	

## Case Summary

On March 2, 2020, § 87(2)(b) filed this complaint with the CCRB via the online form.

On October 8, 2019, at approximately 12:30 p.m., § 87(2)(b) and his brother § 87(2)(b) were in a running vehicle with tinted windows outside the Chase Bank at 726 Grand Street in Brooklyn when PO Michal Jalbrzykowski and PO Volkan Maden (both of the 90<sup>th</sup> Precinct) approached the car and stopped them (**Allegations A and B: Abuse of Authority**, § 87(2)(g)). During the stop, PO Jalbrzykowski frisked and searched § 87(2)(b) (**Allegations C and D: Abuse of Authority**, § 87(2)(g)). PO Maden frisked and allegedly searched § 87(2)(b) (**Allegations E and F: Abuse of Authority**, § 87(2)(g)). PO Jalbrzykowski and PO Maden searched the vehicle (**Allegations G and H: Abuse of Authority**, § 87(2)(g)).

At the end of the incident, PO Jalbrzykowski failed to provide a business card to § 87(2)(b) and PO Maden failed to provide business cards to both § 87(2)(b) and § 87(2)(b) (**Allegations I, J, and K: Abuse of Authority**, § 87(2)(g)).

Both PO Jalbrzykowski and PO Maden activated their body-worn cameras (BWCs) during this incident. NYPD legal provided the recordings to the CCRB on July 24, 2020.

This incident did not result in any arrests or summonses.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Michal Jalbrzykowski stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation (B) Abuse of Authority: Police Officer Volkan Maden stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

It is undisputed that PO Jalbrzykowski and PO Maden stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

PO Jalbrzykowski's BWC recording shows at 0:28 that the § 87(2)(b) vehicle had tinted rear side windows and a tinted rear window. (Board Review 01)

**New York State Vehicle and Traffic Law §375.12(b) states:**

"No person shall operate any motor vehicle upon any public highway, road or street:

- (1) the front windshield of which is composed of, covered by or treated with any material which has a light transmittance of less than seventy percent unless such materials are limited to the uppermost six inches of the windshield; or
- (2) the sidewings or side windows of which on either side forward of or adjacent to the operator's seat are composed of, covered by or treated with any material which has a light transmittance of less than seventy percent; or
- (3) if it is classified as a station wagon, sedan, hardtop, coupe, hatchback or convertible and any rear side window has a light transmittance of less than seventy percent; or
- (4) the rear window of which is composed of, covered by or treated with any material which has a light transmittance of less than seventy percent. A rear window may have a light transmittance of less than seventy percent if the vehicle is equipped with side mirrors on both sides of the vehicle so adjusted that the driver thereof shall have a clear and full view of the road and condition of traffic behind such vehicle." (Board Review 02)

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Michal Jalbrzykowski frisked § 87(2)(b)**

**Allegation (D) Abuse of Authority: Police Officer Michal Jalbrzykowski searched § 87(2)(b)**

**Allegation (E) Abuse of Authority: Police Officer Volkan Maden frisked § 87(2)(b)**

**Allegation (F) Abuse of Authority: Police Officer Volkan Maden searched § 87(2)(b)**

**Allegation (G) Abuse of Authority: Police Officer Michal Jalbrzykowski searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation (H) Abuse of Authority: Police Officer Volkan Maden searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

At approximately 11:11 in PO Jalbrzykowski's BWC footage, PO Jalbrzykowski states to § 87(2)(b) that he smelled the odor of marijuana coming from the § 87(2)(b) vehicle. § 87(2)(b) replies, "that is such B.S." (Board Review 01)

PO Jalbrzykowski and PO Maden stated to the CCRB that the search of the vehicle, the frisks of the § 87(2)(b) and PO Jalbrzykowski's search of § 87(2)(b) all occurred because there was an odor of marijuana in the vehicle. Both officers stated that neither of them recovered marijuana or evidence of marijuana during the incident. (Board Review 03)(Board Review 04) PO Maden denied searching § 87(2)(b) PO Maden's BWC recording between 3:49 and 4:04 is not dispositive. (Board Review 05)

§ 87(2)(b) and § 87(2)(b) stated to the CCRB that neither of them were marijuana smokers, neither of them had smoked marijuana that day, neither of them were aware of any person having smoked marijuana in the vehicle at any point, and there was no reason the car might have smelled of marijuana. (Board Review 06)(Board Review 07)

When this incident occurred, possession of marijuana was a crime in New York. In **People v. Chestnut, 43 A.D.2d 260**, the Appellate Division of the Supreme Court of New York held, "where there is a reasonable belief before the search begins that an automobile contains contraband or evidence of a crime, this constitutes probable cause and a search of the vehicle may lawfully proceed without a warrant." (Board Review 08)

§ 87(2)(g)

**Allegation (I) Abuse of Authority: Police Officer Michal Jalbrzykowski failed to provide § 87(2)(b) with a business card.**

**Allegation (J) Abuse of Authority: Police Officer Volkan Maden failed to provide § 87(2)(b) with a business card.**

**Allegation (K) Abuse of Authority: Police Officer Volkan Maden failed to provide § 87(2)(b) with a business card.**

It is undisputed that PO Jalbrzykowski and PO Maden stopped and searched § 87(2)(b) and § 87(2)(b)'s vehicle. It is undisputed that the incident did not result in an arrest or summons. It is undisputed that PO Jalbrzykowski did not offer a business card to § 87(2)(b) § 87(2)(b) It is undisputed that PO Maden did not offer a business card to either § 87(2)(b) or § 87(2)(b) § 87(2)(b)

**NYC Administrative Code 14-174** defines "searches of persons or property, including vehicles" as "law enforcement activities" and states, "during a law enforcement activity," an officer shall, "offer a business card to such person at the conclusion of any such activity that does not result in an arrest or summons." (Board Review 09)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party. (Board Review 10)
- This is the first CCRB complaint to which § 87(2)(b) has been a party. (Board Review 11)
- PO Jalbrzykowski has been a member of service for five years and has been named as a subject in 11 other CCRB complaints and 28 other allegations, 19 of which are open and two of which were substantiated § 87(2)(g)  
  - 201807314 involved two allegations of discourteous words against PO Jalbrzykowski. The Board recommended Command Discipline B, and the NYPD imposed Command Level Instructions.
- PO Maden has been a member of service for six years and has been named as a subject in 10 other CCRB complaints and 32 other allegations, 15 of which are open and none of which was substantiated. § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- On March 2, 2020, § 87(2)(b) the case was returned for investigation as the complaint was no longer eligible for mediation.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City. (Board Review 12)
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City. (Board Review 13)
- As of April 29, 2021, the New York City Office of the Comptroller had no record of any Notice of Claim filed regarding this incident. (Board Review 14)

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Squad No.: 09

Investigator:	<u>Christopher Olmsted</u>	<u>Investigator Chris Olmsted</u>	<u>June 17, 2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Monique West</u>	<u>IM Monique West</u>	<u>6/21/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date

